

# UTAH SUPREME COURT OR COURT OF APPEALS DECISIONS CALLING FOR LEGISLATIVE ACTION

## INTRODUCTION:



“State courts and state legislatures function in dialogue with one another and serve as checks on one another’s power – alternately reinforcing, calling into question, and even reversing the other’s law-making activities .... When courts fill [gaps] in statutory law in a manner the legislature disapproves of, the legislature can amend the statute to direct a different outcome in future cases. Similarly, the legislature can overrule or preempt common law doctrines by statute. Although courts cannot overrule statutory law on the basis of policy, they are responsible for determining the constitutionality of challenged statutes. Additionally, courts can call the attention of the legislature to statutes in need of clarification or modernization.” *In re Estate of Hannifin*, 311 P.3d 1016 (2013) (dissenting opinion).

## BACKGROUND:

**Survey of Other States:** In 2009 and 2018, NCSL surveyed states concerning tracking cases that impact statutes. Fifteen states responded in 2009, 2018, or both. The approaches taken are varied. Examples include: no tracking, informal tracking by a subject area drafter, and formal tracking by staff assigned to follow court cases or tracking by an entity such as a Revisor of Statutes or a Legislative Reference Bureau.

**Scope of Preliminary Case Law Research:** The attached table provides examples of when a Utah state appellate court refers to the possibility of future legislative action. The table is not a comprehensive list of all cases. The purpose of reviewing the examples is to inform the committee as the committee addresses the policy questions raised by the issue.

## POLICY QUESTIONS:

- Should there be a formal process to track state appellate courts' call for legislative action?
  - If so, what process should be followed to find when an appellate court calls for legislative action?
  - Should the process be prospective or also reach backwards?
  - How frequently would the cases be reported?
  - Should it matter whether the call for action is at the Utah Court of Appeals or Utah Supreme Court level or in the main opinion, concurring opinion, or dissent?
- How should the Legislature respond to a call for legislative action? Who should take the lead?
  - If items are directed to a legislative committee, what process would be used to direct the call for action to the appropriate legislative committee?
  - Should the information be provided to all legislators, all members of a specific committee, chairs of a committee, *etc.*?
- Others?

## Examples of Utah State Appellate Courts Referring to Future Legislative Action

Case Name	Background	Direction from Court	Core Issue for Legislative Action	Related Legislation
<b>State v. Oliver (2018)</b> Court of Appeals of Utah (advanced reports)	Oliver's boyfriend invited two men to Oliver's house to smoke methamphetamine. Sometime later, the young men went into Oliver's bathroom and, without Oliver's knowledge, swallowed additional methamphetamine. One of the young men overdosed, and later died (Victim). Oliver eventually pled guilty to reckless endangerment. The district court, at the State's request, ordered Oliver to pay Victim's medical and funeral expenses as restitution. Oliver appeals that restitution order, arguing that the State did not present sufficient evidence demonstrating that her actions were the proximate cause of Victim's death, and therefore she should not have been required to pay restitution.	Concurring opinion: "If the Utah Legislature did not intend for proximate cause to be the standard applied in the criminal restitution context, it may want to amend the Crime Victims Restitution Act."	Restitution	None found
<b>Design Academy Inc. v. Albiston (2018)</b> Court of Appeals of Utah (advanced reports)	Appellant appeals the district court's denial of its motion to suspend the appellee's driver license and vehicle registration for her failure to satisfy a judgment unrelated to owning or operating a motor vehicle.	"In sum, the punctuation of the statute is flawed, but the Legislature surely did not mean to enact a bizarre scheme that imposes license and registration suspension on those who appeal and lose <i>if and only if</i> the judgment is for damages "arising out of the ownership, maintenance, or use of any motor vehicle," Utah Code Ann. §41-12a-103(2)(b)(i) (LexisNexis 2014), while imposing the same suspensions across the wide range of judgments, including those with no connection whatsoever to the "ownership, maintenance, or use of any motor vehicle," <i>see id.</i> , if the judgment becomes final without an appeal."	License and registration suspension.	None found

Case Name	Background	Direction from Court	Core Issue for Legislative Action	Related Legislation
<b>State v. Mooers (2018)</b> Court of Appeals of Utah (not published in permanent law reports)	Defendant was charged with burglary and theft. The defendant entered a plea in abeyance to the theft charge, and the State dropped the burglary charge. As part of the plea in abeyance the defendant is to pay restitution for the stolen items and for damage to the family's property that resulted from the criminal activity. He appeals the restitution order with respect to the cost of installing security bars on the bedroom window used to enter the house, arguing that because the window did not have security bars before the burglary, the bars "are not economic injury or pecuniary damage, but a security improvement the victims decided to make ...."	"we leave the discussion for another day. Of course, in the meantime, our legislature might choose to amend section 77-38a-302 to specifically authorize 'restitution for expenses incurred by a victim in implementing security measures in response to a defendant's crimes.'"	Restitution	None found
<b>State v. Ogden (2018)</b> Supreme Court of Utah	Defendant was convicted on guilty plea of two counts of aggravated sexual abuse of child. Defendant appealed regarding restitution.	"There are at least two ways to address this: the Legislature could revisit the statute or the Supreme Court Advisory Committee on the Rules of Criminal Procedure could examine what we might do within the existing statutory framework to promote a process that is fair to both victims and defendants in more complex cases."	Restitution	None found
<b>Rueda v. Utah Labor Commission (2017)</b> Supreme Court of Utah (not published in permanent law reports)	The Labor Commission ruled that an employee's injury was by accident. A divided court examined the ruling and considered 1991 amendments to the Occupational Disease Act. Because the court was so divided, the Labor Commission's order stands as issued.	"What is unmistakable given the fragmented nature of this decision is that legislative attention to this issue would be of real benefit. On this there is unanimity." "And I agree with the Chief Justice (and Associate Chief Justice Lee) that this is an area that the legislature should revisit." "I readily concede that the legislature can and should draw clearer lines in the workers' compensation context."	Relationship between Workers' Compensation Act and the Occupational Disease Act	None found

Case Name	Background	Direction from Court	Core Issue for Legislative Action	Related Legislation
<b>State v. Rowan (2017)</b> Supreme Court of Utah	After defendant was charged with narcotics and firearms offenses, defendant moved to suppress evidence. The court granted motion to suppress and dismissed charges. State appealed.	<p>Concurring opinion: “If we were to repudiate the state exclusionary rule, we would create a policy void: a void that would have to be filled by our courts' exercising their common law authority unless and until the legislature chose to intervene. Thus, absent quick and comprehensive legislative intervention, we would, at best, be exactly where we were before we rejected the state exclusionary rule....”</p> <p>Concurring opinion: “Under this approach, we would accept the existing framework of an exclusionary rule (subject to exceptions) <i>as a matter of common law</i>. But we would clarify that this remedy is not a constitutional mandate. And that regime would leave the door open to ongoing adjustment by this court or the Legislature going forward.... This would allow policymakers to determine whether the exclusionary rule is the most effective remedy to protect the rights of Utah citizens.... I would reopen the judicial and legislative dialogue on this important issue. I would conclude that the Utah Constitution does not prescribe an exclusionary remedy for an infringement of the freedom from unreasonable search and seizure. And I would thereby invite our judges and legislators to look for creative ways to correct for the under-and over-inclusiveness problems introduced by the exclusionary rule—ways to fully protect Utah citizens from illegal government intrusions.”</p>	Suppression of evidence though an exclusionary rule	1 <sup>st</sup> Sub. H.B. 392, Search and Seizure Amendments (2018 G.S.) (did not pass)

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<b>Rivers v. Executive Director of the Utah Department of Environmental Quality (2017)</b> Supreme Court of Utah	An environmental protection organization petitioned for judicial review of final action of the executive director of Utah Department of Environmental Quality (UDEQ) adopting an administrative law judge's recommendation to dismiss organization's requests for agency action regarding UDEQ's decision not to undertake the process to review a permit by rule to mining company after company notified Division of Oil Gas & Mining, within the Department of Natural Resources, of planned modifications to company's tar sands bitumen-extraction project.	“Another implication of the Executive Director’s analysis may be that a class of potentially unlawful agency decisions – failures to take legally required action – is entirely insulated from judicial review. We would welcome clarification from the legislature on whether it did, indeed, intend to insulate illegal agency inaction from court challenge.”	Judicial review of agency inaction	None Found
<b>State v. Ray (2017)</b> Court of Appeals of Utah, cert granted	Defendant was convicted of forcible sexual abuse. Defendant appealed.	“Although the solution to this problem is easy enough on a case-by-case basis, albeit often at the price of a reversal and retrial, we believe the Legislature would be well-advised to revisit Utah Code sections 76-5-404(1) and 76-5-404.1(2) and fix this problem. It could do so by excising the vague phrase from the statutes, by including in the appropriate statute the definition of the phrase that has been judicially embraced, or by spelling out the specific other acts the Legislature determines should also constitute forcible sexual abuse.”	Indecent liberties	H.B. 77, Criminal Code Amendments (2018 G.S.) (passed)
<b>Gricius v. Cox (2015)</b> Supreme Court of Utah	Prospective sponsors of referendum for repeal of bill filed petition for extraordinary relief, alleging that Lieutenant Governor's Election Office had refused to accept their application.	“A statutory amendment to clarify the manner in which referenda sponsors may satisfy the statutory requirement to attach a copy of the “law” might be appropriate, but we leave that to the judgment of the Legislature.”	Referendum process	H.B. 11, Referendum Amendments (2016 G.S.) (did not pass)

Case Name	Background	Direction from Court	Core Issue for Legislative Action	Related Legislation
<b>State v. Karr (2015)</b> Court of Appeals of Utah	Defendant was convicted of murder and obstruction of justice. Defendant appealed regarding presumption that defendant was justified in using deadly force in defense of his habitation by showing that entry was lawful or not made with force, violence, stealth, or felonious purpose, and alleged errors in jury instructions explaining how State could rebut presumption.	Concurring opinion: "I concur in the result. I agree with the majority that, on the facts before the jury, the instructional errors were harmless. I write to urge the legislature to consider clarifying the defense-of-habitation statute and in particular its presumption of reasonableness. <i>See</i> Utah Code Ann. 76-2-405 (LexisNexis 2012)."  Concurring opinion: "I concur in the lead opinion. In addition, I join Judge Voros in "urg[ing] the legislature to consider clarifying the defense-of-habitation statute and in particular the presumption of reasonableness." <i>See supra</i> 18. I do so for the reasons he has cogently stated in his concurrence."	Defense of habitation	None Found
<b>Dahl v. Dahl (2015)</b> Supreme Court of Utah	Husband filed petition for divorce, and wife filed separate lawsuit against husband's family trust, seeking declaration of her rights in trust assets. The court entered decree of divorce and declared that wife had no enforceable interest in trust assets.	"Were we to construe the Trust as irrevocable, it would create a serious conflict between trust law and divorce law in Utah. The question of whether a spouse could create an irrevocable trust in which he or she placed marital property, thereby frustrating the equitable distribution of property in the event of a divorce, is not before us in this case. Accordingly, we take no position on a likely outcome of such conflict. Rather we bring the potential pitfalls to the Legislature's attention."	Conflict between trust law and divorce law	HB 111, Domestic Asset Protection Trust Amendments (2016 G.S.) (did not pass)

Case Name	Background	Direction from Court	Core Issue for Legislative Action	Related Legislation
<b>Orlando Millenia, LC v. United Title Services of Utah, Inc. (2015)</b> Supreme Court of Utah	Lender brought action against escrow agent and title companies, asserting claims of breach of fiduciary duty and vicarious liability in connection with real estate transaction. The court granted summary judgment in favor of escrow agent and title companies. Lender appealed.	“As a policy matter, there are downsides to holding a title insurance company vicariously liable for all wrongs the producer perpetrates in the receipt and disbursement of escrow funds. It may even be that the legislature <i>meant</i> to limit the vicarious liability of title insurers to terms not stated on the face of section [31A-23a-]407. But intentions are not laws unless they are enacted as such. So the answer to the title companies’ policy concerns is that they are better directed to the body that enacted this statute. We reject the argument on that basis, while acknowledging the prerogative of the legislature to revisit section [31A-23a-]407 if it prefers a limitation not evident on the face of the statute as it currently stands.”	Liability for title insurers	H.B. 163, Title Insurance Amendments (2016 G.S.) (passed)
<b>Graves v. North Eastern Services, Inc. (2015)</b> Supreme Court of Utah	Parents brought negligence action against provider of services to disabled after its employee sexually assaulted their child after inviting the child into provider’s residential facility. The court denied provider’s motion for summary judgment on the negligence claim. Provider sought review.	“We now interpret our statutory comparative liability regime to call for apportionment of responsibility for intentional torts. That conclusion appears to us to follow from the broad, categorical terms of the Liability Reform Act, as informed by the history and evolution of our statutory scheme. In so holding, we recognize that the statute arguably leaves room for doubt on this question, and of course acknowledge the legislature’s prerogative to override our decision or to clarify its intent if we have misperceived it. Thus, we highlight some of the competing policy considerations at stake as we see them, in a manner that may be useful to the legislature if it decides to revisit this important issue.”	Apportionment of responsibility for intentional torts.	HB 359, Allocation of Fault Amendments (2018 G.S.) (did not pass)